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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,801	07/22/2003	Peter Forsell	2333-122	5300
23117 7590 08/15/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 08/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/623,801

Applicant(s)

FORSELL, PETER

Examiner

Diane Yabut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 17-19, 56, 58-60 and 83-153 is/are pending in the application.
- 4a) Of the above claim(s) 9-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 17-19, 56, 58-60, and 83-153 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is in response to applicant's amendment received on 23 April 2007.

The examiner acknowledges the amendments made to the claims and the specification.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 17-19, 56, 58-60, and 83-153 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gabbay** (U.S. Pub. No. **20020091395**) in view of **Furst** (U.S. Pub. No. **20020099438**).

Claims 1, 17-19, 56, 58-60, and 83-153: Gabbay discloses the claimed device, an implantable constriction device for forming a restricted stoma opening in the stomach or esophagus of a patient, comprising an elongate non-inflatable composite (animal pericardium and flexible biocompatible material, see page 1, paragraphs 10-12) structure **80, 10**, or elongate means, adapted to externally constrict the stomach or esophagus of the patient (Figures 10-11), wherein said elongate composite structure is composed of a base material making said structure self-supporting, or means for making the constricting means self-supporting, an adjustment means adapted to mechanically adjust the non-

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inflatable composite structure to either enlarge or restrict the stoma opening (Figures 12-13; page 5, paragraph 63), *except for* the device having property improving means for improving at least one physical property of said composite structure other than self-supporting properties, said property improving means including at least one layer applied on said base material intended to contact the stomach or esophagus, and improving the anti-friction properties of said constricting means, as well as liquid impermeability, softness, strength, fatigue resistance, aggressive body fluid resistance, anti-friction properties, the layer being selected from a group consisting of a biocompatible metal layer or a viscoelastic material.

Furst teaches property improving means comprising a coating or layer on a base material at least along a side of said elongate composite structure that is capable of contacting the stomach or esophagus, said coating having better aggressive body fluid resistant properties than said base material, said coating being selected from the group consisting of a Teflon<sup>TM</sup> (polytetrafluoroethylene), Parylene<sup>TM</sup>, and a biocompatible metal coating selected from the group consisting of gold, silver, and titanium, and that biocompatible coatings are used to reduce inflammation, infection, irritation, and/or rejection of the device (page 5, paragraph 17). It would have been obvious to one of ordinary skill in the art to provide a coating on the elongate structure, as taught by Furst, to Jakobsson in order to reduce inflammation, infection, irritation, and/or rejection of the device.

Although Furst does not teach a viscoelastic layer, it would have been obvious to one of ordinary skill in the art to provide a layer made of a

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biocompatible material that reduces the likelihood of injuring or damaging tissue, such as silicone gel, cellulose gel, or collagen gel.

NOTE: Claims 99-102 and 103-106, respectively, appear to have the exact same limitations.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-4, 17-19, 56-60, 78, and 79 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER